

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN R. MASON,

Defendant.

Case No. 18-cr-40020-JPG-001

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Justin R. Mason’s motion for relief from his criminal judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) and (d)(1) (Doc. 121). In his circumstances, the relief Mason seeks is only available under 28 U.S.C. § 2255. However, the Court is hesitant to construe this as a § 2255 motion without a clear indication that Mason intends to invoke that statute. “[T]he court cannot so recharacterize a pro se litigant’s motion as the litigant’s first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law’s ‘second or successive’ restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing.” *Castro v. United States*, 540 U.S. 375, 377 (2003). Accordingly, the Court **WARNS** Mason that if he does not file a motion to withdraw his pending motion on or before January 20, 2023, the Court will construe it as a § 2255 motion and Mason will then be subject to the second or successive filing restrictions contained in 28 U.S.C. § 2255(h).

IT IS SO ORDERED.

DATED: December 22, 2022

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE